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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BYRON PREACELY,

Defendant.

CASE NO. 1:23-MJ-00135-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: December 14, 2023
TIME: 2:00 p.m.
COURT: Hon. Stanley A. Boone

This case is set for a preliminary hearing on December 14, 2023. The parties agree and stipulate to schedule the preliminary hearing on December 28, 2023, at 2:00 p.m. before the duty magistrate. The parties desire time to explore the possibility of a pre-indictment resolution. In order to gather the necessary information, review it, and engage in fruitful discussions, the parties need the time requested.

If the case is continued, this Court should designate a new date for the preliminary hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for a preliminary hearing on December 14, 2023.
2. By this stipulation, defendant now moves to schedule the preliminary hearing on

1 **December 28, 2023, at 2:00 p.m.** and to exclude time between December 14, 2023, and December 28,
2 2023.

3 3. The parties agree and stipulate, and request that the Court find the following:

4 a) This case was the result of a probable cause arrest in Sequoia National Park. The
5 investigation is ongoing and witnesses to the events in question are still being interviewed. These
6 witnesses may impact resolution of the case.

7 b) The parties are in active discussions regarding a potential pre-indictment
8 resolution. The government provided a plea offer to the defense on December 7, 2023, and
9 provided initial discovery.

10 c) The defense requests additional time to review discovery, conduct further
11 investigation into pre-indictment matters, and review the plea agreement.

12 d) Counsel for defendant desires additional time to consult with his client, conduct
13 further investigation, and further discuss charges with the government.

14 e) Counsel for defendant believes that failure to grant the above-requested
15 continuance would deny him the reasonable time necessary for effective preparation, taking into
16 account the exercise of due diligence.

17 f) The government does not object to the continuance.

18 g) Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later
19 than 14 days after initial appearance if the defendant is in custody,” unless the defendant
20 consents and there is a “showing of good cause”. Here, the defendant consents and there is good
21 cause as set forth herein.

22 h) Based on the above-stated findings, the ends of justice served by continuing the
23 case as requested outweigh the interest of the public and the defendant in an indictment or trial
24 within the original dates prescribed by the Speedy Trial Act.

25 i) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
26 et seq., within which an indictment must be filed and within which a trial must commence, the
27 time period of December 14, 2023 to December 28, 2023, inclusive, is deemed excludable
28 pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it results from a continuance granted by the

1 Court at defendant's request on the basis of the Court's finding that the ends of justice served by
2 taking such action outweigh the best interest of the public and the defendant in a speedy
3 indictment/trial.

4 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
5 Speedy Trial Act dictate that additional time periods are excludable from the period within which an
6 indictment must be filed and a trial must commence.

7 IT IS SO STIPULATED.

8 Dated: December 8, 2023

PHILLIP A. TALBERT
United States Attorney

10 /s/ ARIN HEINZ
11 ARIN HEINZ
Assistant United States Attorney

12 Dated: December 8, 2023

13 /s/ GRIFFIN ESTES
14 GRIFFIN ESTES
Counsel for Defendant
15 BYRON PREACELY

16 **FINDINGS AND ORDER**

17 THE COURT HEREBY FINDS: The preliminary hearing is continued from December 14, 2023
18 to **December 28, 2023, at 2:00 p.m. before Magistrate Judge Sheila K. Oberto**. Time between
19 December 14, 2023, and December 28, 2023 will be excluded pursuant to 18 U.S.C. § 3161(h)(7)(A),
20 B(iv) and F.R.Cr.P. 5.1(c) and (d) because it results from a continuance granted by the Court at
21 defendant's request on the basis of the Court's finding that the ends of justice served by taking such
22 action outweigh the best interest of the public and the defendant in a speedy indictment/trial.

23 IT IS SO ORDERED.

24 Dated: **December 8, 2023**

25 /s/ *Barbara A. McAuliffe*
26 UNITED STATES MAGISTRATE JUDGE